

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL032708)**

INTRODUCTION

On 3/27/08, the Nevada Superintendent of Public Instruction received a complaint dated 3/21/08, from the parents of a student with disabilities alleging violations in the special education program in the Clark County School District (CCSD). An investigation team was appointed to examine the allegation that the CCSD had hired, supervised and retained an unqualified and improperly trained staff person who did not provide specific accommodations to the student, including assistance in toileting at recess and while eating, which were required by his Individualized Educational Program (IEP), and therefore the IEP was not implemented.

Prior to the complaint being filed, the parents had also filed a request for a due process hearing dated 2/22/08. One of the allegations in the request for a due process hearing was that the CCSD had failed to provide a qualified and appropriately trained paraprofessional to implement the student's IEP. Federal regulations at 34 CFR §300.152(c)(i) state "If a written complaint is received that is also the subject of a due process hearing under §300.507 or §300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing." Therefore, the complaint investigation was set aside pending the resolution of the due process hearing. CCSD and the parents reached a resolution on 4/25/08, regarding the due process complaint. The parents' request for a complaint investigation on the concomitant issues was not withdrawn, so the sixty-day timeline for resolving the complaint commenced on 4/25/08.

COMPLAINT ISSUES

The allegations in the complaint, clarified by interviews and a review of the documents, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE):

ISSUE 1: Whether the CCSD complied with federal and state regulations to provide personnel, specifically a special education aide (Aide), who was appropriately qualified, trained and supervised to implement the student's IEP during the 2007-2008 school year.

ISSUE 2: Whether CCSD implemented the student's IEP specifically with respect to providing a toileting accommodation and services at recess and while eating.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Special Education Teacher
- Special Education Instructional Facilitator
- School Principal
- CCSD Compliance Office Staff
- Parent

DOCUMENTS REVIEWED

The investigation team reviewed the following documents:

- The student's IEPs dated 5/15/07, 9/11/07, 11/16/07
- Progress reports

- Due process resolution agreement between the CCSD and the parents

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811 (9th Cir. 2007)

FINDINGS OF FACT

This investigation involved a student with multiple impairments who attended a self-contained classroom in CCSD during the 2007/2008 school year. At issue in the complaint were the qualifications of a specific female Aide to implement portions of the student's IEP, as well as the actual implementation of the IEP. A review of documents, as well as interviews with the parent, the special education teacher, the special education instructional facilitator, the principal and CCSD compliance office staff revealed the following facts.

A 5/15/07 annual IEP was in effect for the student during the 2007/2008 school year. Up to the date of the complaint subsequent revisions were held on 9/11/07 and 11/16/07. For the purpose of this report, these IEPs are referred to as the 2007/2008 IEPs.

The 2007/2008 IEPs included neither goals or objectives nor accommodations or other services for recess or for eating. The 2007/2008 IEPs did not include the assignment of an Aide to the student but did include the requirement of providing adult assistance in the implementation of an accommodation in the bathroom as described below.

The 2007/2008 IEPs included a toileting objective that stated "by six (6) month review ... the student will pull up pants and push pants down to use restroom independently achieving a criteria of 85% as implemented by Special Education teacher" (toileting objective). An accommodation for the toileting objective was "adult supervision and assistance in the restroom" (emphasis added) with a frequency listed "as needed" (toileting accommodation). The special education teacher reported that "as needed" referred to the times the student needed to use the restroom. During the fall semester, the student's classroom had its own restroom and the special education teacher reported that the toileting accommodation was consistently provided to the student in that restroom by adults, including the Aide, as required by the IEP.

The classroom was relocated for the spring semester and the student had to use one of the larger restrooms available to other boys in the school. Beginning in January following the move to the new classroom, the special education teacher reported that on those occasions when the female Aide accompanied the student to the restroom, the teacher did not direct the Aide to help the student in the restroom, but to remain in close proximity outside of the restroom because her gender would create awkwardness in the boys' restroom. The special education teacher reported that the Aide was responsible for taking the student to the boys' restroom a total of approximately five or six times, with the assumption that remaining outside of the restroom, but in close proximity, was sufficient to provide the toileting accommodation.

The parent reported, and the special education teacher, special educational instructional facilitator and principal confirmed, that on 2/6/08, the Aide was not in the restroom assisting the student with pulling his pants up, the student exited the restroom with his pants incompletely pulled up, and the Aide did not intervene in time to prevent the student being exposed to classmates in the hall.

Subsequent to the February 6th incident, the special education teacher, a male, personally provided the assistance required by implementing the toileting accommodation in the restroom. The special education teacher also reported that the student had made progress towards the goal of independently pulling his pants up and down at the time of this incident. Subsequent to the filing of the complaint, the student achieved the objective of pulling his pants up and down independently 85% of the time.

CONCLUSIONS OF LAW AND REASONS

ISSUE 1: Whether the CCSD complied with federal and state regulations to provide personnel, specifically an Aide, who was appropriately qualified, trained and supervised to implement the student's IEP during the 2007-2008 school year.

This complaint concerned an allegation that CCSD had hired, supervised, and retained an unqualified and improperly trained Aide in the student's special education program.

Federal regulations at 34 CFR §300.207 require that the school district must ensure "that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156." Federal regulations at 34 CFR §300.156 require that personnel, including paraprofessionals, "have the content knowledge and skills to serve students with disabilities."

State regulations in NAC Chapter 388 (2007) require that "the public agency must ensure that personnel, including ... paraprofessionals ... must be appropriately and adequately prepared and trained ... to serve pupils with disabilities."

In this case, the Aide received direction from the special education teacher regarding the implementation of the student's IEP, specifically the toileting accommodation. Interviews demonstrate that the Aide did have the skills to assist the student with the pulling down and pulling up of his pants when needed, because this accommodation was properly provided by the Aide during the period of time during the fall semester when the accommodation was provided while the student used the restroom located within the student's classroom. Thus, there is no evidence that the Aide lacked knowledge and skill to provide the accommodation in the student's IEP.

Therefore the investigation team concluded that CCSD complied with federal and state regulations to provide personnel, specifically an Aide, who was appropriately qualified, trained and supervised to implement the student's IEP during the 2007-2008 school year.

ISSUE 2: Whether CCSD implemented the student's IEP specifically with respect to providing a toileting accommodation and services at recess and while eating.

This complaint concerned an allegation that CCSD did not implement the student's IEP specifically with regard to toileting accommodations, and with regard to supervision and services at recess and lunch.

State regulations at NAC §388.281.6(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee." However, "only

material failures to implement an IEP constitute violations of the IDEA ... [and] a material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn v. Baker Sch. Dist.* 502 F.3d 811 (9th Cir. 2007).

In this case, because the student's 2007/2008 IEPs did not include any mention of services required to be provided during recess or while eating there was no obligation of the district to provide such services in the implementation of the 2007/2008 IEPs.

The 2007/2008 IEPs included a toileting accommodation specifically stating that the student would receive "adult supervision and assistance in the restroom" (emphasis added). Notwithstanding the Aide's gender, she or another adult was required in accordance with the 2007/2008 IEPs to be in the restroom with the student to assist with toileting. The Aide's gender did not relieve the district of its obligation to implement the 2007/2008 IEPs as written. The student's subsequent success at achieving the toileting objective also did not mitigate the district's failure to provide the toileting accommodation. The failure to implement the toileting accommodation in the restroom on approximately five or six occasions, resulting on one occasion with the student's exposure to classmates, was more than a minor discrepancy between the services provided to the student and the services required by the 2007/2008 IEPs.

Therefore the investigation team concluded that CCSD did not comply with state regulations to implement the student's IEP specifically with respect to implementing the toileting accommodation, and the CCSD did comply with state regulations to implement the student's IEP with regard to supervision and services at recess and while eating.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not implement the student's IEP with respect to the accommodation requiring adult supervision and assistance in the restroom.

Professional Development/Training

Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must include a plan to review and revise, where necessary, site-level and district-level policies and procedures and provide training to special education Aides with regard to implementing IEPs as written specifically with regard to toileting accommodations.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.